



MALTA

BORD LI JIRREGOLA L-KERA

MAGISTRAT DR.

GIOVANNI GRIXTI

Seduta tas-7 ta' April, 2014

Rikors Numru. 103/2012

Maurizio Scicluna

vs

Martin William Stephen Else (58369A)

The Board;

Having seen the application which states:

1. Whereas in virtue of a private agreement dated 5th June, 2012, copy of which is being annexed and marked as Doc A, the applicant granted and conceded by title of lease unto defendant the premises situated in 'Seascape Apartments', Blk B, Flat 10, Imrejkba Street, Qawra;
2. Whereas in terms of clause no. 15 of the private agreement *de quo*, it is being stipulated that in case the defendant is in default in paying the rent for one month, and remains so in default after the lapse of fifteen (15) days from the date when the relative rent payment was due, the concession of the premises will dissolve *ipso jure* and the property on lease shall return in possession of the applicant;
3. Whereas the defendant was in default in paying punctually the rent for the months of October, November and December, 2012 and moreover, the defendant was also in default in paying the balance due relative to utilities namely water and electricity;
4. Whereas the provisions of article 167 *et sequitur* of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) on special summary proceedings are applicable to the present action;

Thus, in view of the above stated, the defendant is hereby demanded to state why this Honourable Court should not, saving any other declaration deemed necessary according to law:-

1. Determine the action and proceed with judgment according to the applicant's demand without proceeding to trial and this in accordance with article 16A *et sequitur* of Chapter 69 of the Laws of Malta;
2. Declare and decide that the lease subject to private agreement dated 5th June, 2012 concerning the premises, namely 'Seascape Apartments', Blk B Flat 10, Imrejkba Street, Qawra is dissolved *ipso jure*, and that consequently the defendant occupying the same property without a valid title at law should vacate and return possession of the same to the applicant, and this within a short and peremptory period as allowed to them by this Honourable Court;
3. Condemn the defendant to pay the applicant the complete amount of one thousand, one hundred and forty euro and ninety five cents, (€1,140.95), representing the sum of one thousand, one hundred and twenty-five euro as regards payment of rent for the months of October, November and December, 2012, and the remaining sum relating to compensation for the occupation of the premises *de quo* and other amounts due in relation to the use of premises between the months of October and December, 2012.

With costs and legal interest, as from the date when the relative payments became due, to the date of the effective payment, against the defendant who is hereby being subpoenaed, and saving all actions competent to the applicant against the defendant, as regards payment of rents due for occupying the premises and other amounts due in connection with the use of premises including water and electricity consumption, and other services in the same

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premises to the date of the effective release from the premises, including those for damages, *si et quatenus*.

Having seen the reply of respondent:

Whereas the defendant hereby submits that he had vacated the premises subject to this action on 8 June 2013 and therefore claims 1 and 2 of the application are today extinguished and therefore costs should be borne by the plaintiff;

Whereas with regard to the third claim, the defendant submits that this Board is not competent to hear and decide upon a money claim;

Whereas without prejudice to the abovementioned plea of lack of competence, the defendant owes much less than that stated in the application.

Having heard the evidence;

Having seen the records of the case;

Considered:

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That the applicant has seized this Board with a request to evict the respondent from premises being let to him by the said applicant on the premise of failure to pay for rent and water and electricity bills. The applicant further requested that respondent be condemned to pay the amounts due for rent and water and electricity bills as appear in the application and this by deciding the case summarily against the respondent;

That after having failed to notify the respondent within the time prescribed by law, the case assumed its normal course and could not therefore be decided summarily as requested by the applicant. According to the applicant, the respondent lessee failed to pay the contracted rent together with water and electricity bills for the premises leased to him in accordance with the conditions as outlined in the contract of lease exhibited with the application as Document "A". On the basis of this testimony and due to the respondent not submitting any defence, applicant requested that the case be decided. Respondant was however allowed by this Board to submit a note of reply after having presented this Board with reasons for his non appearance;

Having seen that respondent declared in his statement of defence submitted on the 22 October 2013, that he has vacated the premises on the 8 June 2013, this Board refrains from taking further cognizance of the request to evict the respondent;

Having seen the preliminary plea of the respondent that this Board does not have the competence to hear and decide on money claims. Having seen the declaration of the respondent as registered in the records of the sitting of the 2 Decembe 2013 that he is withdrawing the plea regarding the competence of this Board, the said Board refrains from taking further cognizance of this plea;

Now therefore this decision is with regard to the request for payment of arrears of rent and water and electricity bills. Applicant again testified that respondent lessee paid rent and dues regularly for the first three months as per the conditions stipulated in the rent agreement. However, in October 2013, lessee complained about the water and electricity bills and offered to pay €250 in lieu of €375 due for rent. He also instructed applicant to direct all communications with his lawyer from then on. From the records of the case it results that all water and electricity services over this apartment are registered in the name of applicant who in turn makes use of software provided by the billing company ARMS Ltd to extrapolate the amount due for the apartment in question. Respondant believes that the amounts for water and electricity request by applicant are incorrect especially since four people were living in the apartment when one is registered for rebate purposes. Respondant had requested the landlord that he authorises transfer of the water and electricity registration onto him but landlord was informed that this is subject to a charge of €400 by ARMS Ltd and furthermore that there was no obligation in the contract of lease to make such transfer. Landlord present a bill for water and electricity services on a monthly bases by making use of the billing software by ARMS Ltd as bills are not normally received by landlord every month;

From the testimony of the landlord and the lessee himself, there is no reason valid at law why the respondent withheld payment of the rent and dues for water and electricity. Reference is made to Document MW1 exhibited by respondent. This is an email from the landlord to the tenant stating *“Martin, please see the below form, section D is documentation that should be provided so we can change the number of persons resident. So if I can have the documents by tomorrow I could apply the following day”*. In his note of submissions, respondent states that the landlord refused to sign the relevant forms for the rebate for water and electricity tariffs as he

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was obliged to do and that this refusal justified the non payment of rent by way of setoff for overcharging in previous months. The Board does not concur with this conclusion which is in itself contradicted by the respondent himself through the documents submitted. It was up to the lessee to prove that the rebates which he alleges was entitled to amounted to the figures which he presented to the landlord as being overcharged. It was also up to the lessee to prove that it was the landlord who was refusing to sign the forms for the obtaining of the rebates. However, all evidence points to the contrary;

The Board therefore, while refraining from taking cognizance of the first and second requests, upholds the third request and condemns the respondent to pay to the applicant the sum of €1,140.95 with interest representing the overdue rent and bills of water and electricity services as detailed in the application.

Costs are to be borne by the respondent.

< Sentenza Finali >

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